

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 558 of 2000

with

CIVIL APPLICATION NO 4602 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

and

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GIJYABEN WD/O RANCHHODBHAI CHHANABHAI

Versus

BHANABHAI NARANBHAI MISTRY

Appearance:

MR MI PATEL for Petitioners

MR RN SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

and

MR.JUSTICE H.K.RATHOD

Date of decision: 19/06/2000

ORAL JUDGEMENT

This appeal, at the time of admission, can be disposed of finally without reference to the record. Shri M. I. Patel, learned counsel for the appellants and Shri R.N.Shah, learned counsel for the respondents have been heard and the judgment under appeal has been examined.

2. The case of the plaintiff-respondent in the court below was that he is the owner of the property in dispute. It was given on licence to the defendants Nos. 1-2 who are the appellants before us. Keeping in view the financial difficulty faced by the defendants, the property was given on licence basis without charging any licence fee. It was also alleged that the husband of the defendant No. 1 and father of the defendant NO. 2 gave written undertaking on 21st February, 1976 in favour of the plaintiffs assuring to hand over the possession in short time. Subsequent letter was also written by the defendant No. 1 while the plaintiff was abroad assuring him to hand over possession of the suit premises within short period to the plaintiff. However, when the plaintiff visited India and requested the defendants to hand over the possession, they refused to accept the request of the plaintiff. Notice revoking licence was given on 9.7.98 which could not be served on account of postal strike. Consequently, notice was sent through courier which was served upon the defendants. They did not vacate the premises. Hence the suit for possession was filed.

The defendants resisted the suit on the ground that no written undertaking was given to the plaintiff to vacate the premises. They also pleaded that they are in occupation of the suit premises since more than 40 years and they have made some repairs and alterations in the suit premises. Plea of adverse possession was half heartedly taken in the written statement.

The trial court found that the plaintiff is the owner of the premises in dispute. It further found that the written undertaking given by the defendant NO. 1 was proved. It further found that the plea of adverse possession could not be established by the defendants appellants. With these findings, the suit of the plaintiff for possession was decreed. Hence this appeal.

Learned counsel for the parties have been heard.

SO far as the finding of the trial court on adverse possession is concerned, we do not find any illegality therein. It is based upon proper consideration of oral and documentary evidence adduced by the plaintiff. The defendants' evidence establishing plea of adverse possession was wholly inadequate. The trial Court has rightly observed that the defendants have failed to establish that they were in possession of the suit premises for a period exceeding twelve years openly and hostile to the title of the real owner. No reliable evidence was produced by the defendants in support of the plea of adverse possession. Mere occupation of the defendants of the suit premises will not render them owners by adverse possession. Name of the plaintiff is still recorded in the municipal record. It is nowhere mentioned in the municipal record that the defendants are the owners of the suit premises. Simply because on some occasions, taxes were paid by the defendants, it will not constitute evidence of title by adverse possession. If the electricity bills were paid by the defendants in the name of the plaintiffs, that will also not be the evidence of title by adverse possession in defendants' favour.

It is proved from the evidence adduced on behalf of the plaintiff that he is the owner of the property. It is also proved from the evidence as well as from the admission of the defendants that the plaintiff is the owner of the property and that it was given on licence to the defendants. There is admission in the statement of the defendants Exh. 65 that the licence was given in presence of two witnesses Mohanbhai C. Mehta and Ranchhodbhai Bhanabhai. There is also admission in the statement on oath given by the defendant in Exh. 65 that the plaintiff is the owner of the property. It is further admitted in the said statement Exh. 65 that the premises was given to the defendants about 30 to 40 years back because of weak financial condition of the defendants and further because they were unable to obtain any other premises on rent. It was further admitted that no monetary benefit was given to the plaintiff on account of this transaction of licence. There is also writing Exh. 35 that the possession shall be handed over to the plaintiff. The undertaking was given on 21st February, 1976. Learned counsel for the appellant has stated and argued that this undertaking is not signed by one of the defendants. Even if we ignore this undertaking, there is enough evidence on record to establish that the plaintiff is the owner of the property in suit and he gave the same to the defendants on licence. The licensee, therefore, cannot be permitted to raise this plea of adverse

possession against the real owner. The licence having been validly revoked through notice, the plaintiff was entitled to a decree for possession. The trial court, therefore, committed no error in decreeing the suit. There is no merit in this appeal which is hereby dismissed with no order as to costs.

Since the first appeal has been dismissed, civil application is dismissed as infructuous.

19.6.2000 (D.C.Srivastava,J.)

(H.K.Rathod,J.)

Vyas.